

RUSS, AUGUST & KABAT

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CE SOIR LINGERIE CO., INC., a
California Corporation, d/b/a FASHION
FORMS, INC., d/b/a LINGERIE
SOLUTIONS,

Plaintiff,

vs.

IMAGINE ENTERPRISES, LLC, a
New York limited liability company,

Defendant.

IMAGINE ENTERPRISES, LLC, a
New York limited liability company,

Counter-claimant,

vs.

CE SOIR LINGERIE CO., INC., a
California Corporation, d/b/a FASHION
FORMS, INC., d/b/a LINGERIE
SOLUTIONS; BEVERLY ANN DEAL,
an individual; ROES 1-10;

Counter-defendants.

Case No.: 2:11-cv-07291 DMG(FMOx)

[Assigned to The Honorable Dolly M.
Gee, Courtroom 7]

**CE SOIR'S NOTICE OF MOTION
AND MOTION TO FILE A
SURREPLY MARKMAN BRIEF
INFORMING COURT OF
TESTIMONY OF IMAGINE'S
EXPERT WITNESS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Original Complaint Filed:
September 2, 2011

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff and Counter-defendant Ce Soir Lingerie Co., Inc. ("Ce Soir") hereby moves for permission to file a short surreply brief in connection with the Markman hearing scheduled for August 23, 2012, to inform the Court of the testimony of Imagine's purported expert witness, for whom Imagine submitted a declaration in connection with its claim construction briefing.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place over electronic email exchanged on August 16, 2012. Counsel for Imagine Enterprises, LLC ("Imagine") has indicated that it will oppose the motion.

This Motion is made based on this Notion of Motion and the Memorandum of Points and Authorities in Support of Motion to File a Surreply Markman Brief Informing Court of Testimony of Imagine's Expert Witness.

DATED: August 21, 2012

Respectfully submitted,

RUSS, AUGUST & KABAT
 Marc A. Fenster
 Eric J. Carsten

By: /s/ Eric J. Carsten
 Eric J. Carsten
 Attorneys for Plaintiff and Counter-
 defendant Ce Soir Lingerie Co., Inc.
 and Counter-defendant Beverly Ann
 Deal

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff and Counter-defendant Ce Soir Lingerie Co., Inc. (“Ce Soir”) brings this Motion for permission to file a short surreply brief in connection with the Markman hearing scheduled for August 23, 2012. A copy of Ce Soir’s surreply is attached as Exhibit A to this Motion.

Ce Soir’s surreply is addressed solely to the deposition of Imagine’s purported “expert” – Ms. Tara Cavosie, the principal of Imagine Enterprises, LLC (“Imagine”). Ce Soir was only able to depose Ms. Cavosie after it had filed its Responsive Claim Construction Brief on August 14, 2012. Now that it has obtained Ms. Cavosie’s testimony, Ce Soir respectfully requests the opportunity to briefly inform the Court of Ms. Cavosie’s testimony, as her testimony does not support Imagine’s claim construction arguments.

While claiming that Ce Soir’s intention of filing this motion is “improper,” Imagine has not responded to Ce Soir’s request for an explanation of how this motion is improper. Due to the movement of the claim construction briefing deadlines (at Imagine’s request), the fact that Imagine did not disclose Ms. Cavosie as a purported expert or produce her declaration prior to serving its opening brief, and the short period between the deadline for Imagine’s opening brief (which had numerous, previously undisclosed extrinsic evidence) and Ce Soir’s responsive brief, Ce Soir could not depose Ms. Cavosie until after it had served its responsive claim construction brief. Ce Soir took Ms. Cavosie’s deposition shortly thereafter, and now seeks permission from the Court to enter this short surreply revealing her testimony (and attaching relevant excerpts from the deposition transcript). As Ms. Cavosie is the principal of Imagine, a counter-claimant in this matter, and Imagine’s purported “expert,” the introduction of Ms. Cavosie’s testimony does not unfairly prejudice Imagine.

For all of these reasons, Ce Soir respectfully requests that the Court grant this motion and enter the short surreply attached as Exhibit A to this motion.

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DATED: August 21, 2012

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Eric J. Carsten

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Attorneys for Plaintiff and Counter-
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